



Department
for Transport

Tim Rees
Market Lead
Cross London Market
Great Minster House
33 Horseferry Road London
SW1P 4DR
E-mail: Tim.Rees@dft.gov.uk

FAO: Matthew Garbutt
Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

BY EMAIL
Matthew.Garbutt@devonshires.co.uk

31 March 2022

Your Ref: MPG/BRI207.1

Dear Sirs/ Devonshires LLP

Anticipated award of Southern, Thameslink and Great Northern franchise to GTR

Your Clients: Bring Back British Rail (“BBBR”) and the Association of British Commuters (“ABC”)

1. Thank you for your letter dated 22 March 2022.
2. We refer to this and to our previous correspondence, including our letters of 16 February and 2 March 2022. Where relevant, we use the definitions adopted in our previous letters. For convenience only, we have also used the main headings adopted in your letter.
3. Your letter contains commentary on the TSGN franchise dating back to 2016. We do not accept your clients’ characterisation of events stretching back over six years or the inferences which you seek to draw from such events in your letter. However, we do not consider it to be necessary to respond to all such historic matters in this letter; where we have not commented on any matter, this does not mean that the position set out in your letter is accepted as either relevant or accurate. The position of the Secretary of State remains reserved in full.

Factual Matrix

4. Whilst we note the further “Factual Matrix” which is set out at paragraphs 2 to 14 of your letter, we do not comment further on those paragraphs. We refer to our previous correspondence and to the information referred to elsewhere within this letter.

Assurances Given

5. As you may be aware, the Secretary of State has now awarded a National Rail Contract (“**NRC**”) to GTR, under which it will continue to operate the TSGN franchise after March 2022. Accordingly, a number of aspects of your letter have been superseded. The NRC was entered into on 24 March 2022 and awarded taking into account relevant factors, as referred to in paragraphs 8 and 9 of our letter dated 16 February 2022.

Requests

6. In response to paragraph 21 of your letter (which links back to paragraph 12 of our letter dated 16 February 2022), we would provide the following additional information:
 - a. As to the Secretary of State’s position regarding LSER and the Investigation, including the terms of reference, we refer you to the contents (including paragraph 23) of the notice dated 17 March 2022 issued in accordance with section 57C of the Railways Act 1993 (“**RA1993**”) on behalf of the Secretary of State in connection with LSER (the “**Penalty Notice**”). We understand from your letter that you have had sight of the Penalty Notice, but for convenience a copy may be found in the link below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061458/lser-penalty-notice.pdf
 - b. The review did consider the position of GTR and whether the conduct found at LSER was replicated. In our letter dated 16 February 2022, we noted that GTR is managed and operated as a separate entity and by a separate executive management from LSER. The decision about the award of the TSGN franchise was taken in accordance with the s.26 RA1993 franchising award policy. In view of the serious issues identified on LSER, the Department considered that it was important to understand if there were issues that would mean it would not be appropriate to enter into a replacement contract with GTR pursuant to this policy. The Department has carefully reviewed the evidence to be confident whether the same or similar issues were replicated at GTR and the Department is satisfied that this was not the case.

The members of the LSER independent committee were the Chairs of the owning groups, Clare Hollingsworth for The Go Ahead Group PLC and Sir Derek Jones for Keolis (UK) Limited. The LSER independent committee involved the following external parties in its investigation: KPMG LLP, Kingsley Napley LLP, Womble Bond Dickinson LLP and Ashurst LLP.

Through the publication of the Penalty Notice, details of the review into LSER and the Department's findings have been put in the public domain. We do not consider it necessary or appropriate to make further information public in this regard.

- c. See paragraph 5 above.
- d. Having taken account of all relevant factors in accordance with the s.26 RA1993 franchising policy, the Secretary of State has now awarded a NRC to GTR.
- e. The GIAA's review is expected to be finalised in the coming weeks. The Department will then consider any recommendations and address them as may be appropriate.

Provision of Information

- 7. In our letter of 2 March 2022, we referred to the obligations of confidentiality which are owed by the Secretary of State pursuant to RA1993 and the relevant franchise agreements. We also indicated to you that the Department would be making relevant information publicly available at the appropriate time. Information has now been published in the Penalty Notice to which we have referred above.

Letter of 2 February 2022/ Ms Yates' FoI request

- 8. You have confirmed that Ms Yates is not your client and it would not be appropriate to correspond with you in relation to the FoI request made by her. We therefore have no comment to make in relation to paragraphs 24 and 25 of your letter.
- 9. We can confirm however that a response has subsequently been provided to Ms Yates in connection with her request.

Yours faithfully



Tim Rees

Market Lead, Cross-London Market